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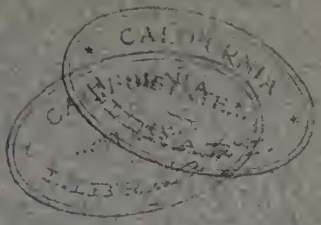

THE RECALL

MARGARET A. SCHAFFNER

MADISON, WISCONSIN
DECEMBER, 1907

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MARGARET A. SCHAFFNER

COMPARATIVE LEGISLATION BULLETIN—NO 12—DECEMBER 1907

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Reviews legislation for the recall enacted in the United States in 1905.

METHODS OF ENACTMENT

The right of recall is the power to remove an official at an election held upon petition of a specified percentage of the qualified electors.[1]

If the incumbent is sustained at the removal election, he continues to hold office.

The enactment of provisions for the recall of officials has been secured through state and through municipal legislation.

Municipal legislation[2]

Freeholders' charters. The recall has been adopted in a number of cities in California and Washington under the general constitutional and legislative provisions for the framing of freeholders' charters by means of an elected board of freeholders.

For municipal charters which incorporate a recall provision, see San Bernardino, Cal. Laws, 1905, p. 960–1; Santa Monica, Cal. Laws, 1907, p. 1047–8; Alameda, Cal. Laws, 1907, p. 1101–3; Long Beach, Cal. 1907, p. 1230–33; Riverside, Cal. Laws, 1907, p. 1345–7; and Everett, Wash., Charter adopted Nov. 26, 1907.

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[1] Compare the provisions for Los Angeles, Cal. Laws, 1903, p. 574–5; Seattle, Charter Amendment adopted March 6, 1906; Lewiston, Id. Laws, 1907, p. 358–60; Des Moines, Ia. Laws, 1907, c. 48, sec. 18; and Fort Worth, Tex. Special Laws, 1907, p. 130–1.

[2] In California, charters framed by boards of freeholders and charter amendments secured through direct initiative petitions must be ratified by the legislature after being adopted by the people, but the legislature has uniformly ratified such charter provisions. In Washington, freeholders' charters and charter amendments need not be referred to the legislature.

Freeholders' charter amendments. In a number of cities the recall has been secured as an amendment to freeholders' charters through direct initiative petitions.

The recall has been established as a charter amendment in Los Angeles, Cal. Laws, 1903, p. 574–5; San Diego, Cal. Laws, 1905, p. 922–3; Pasadena, Cal. Laws, 1905, p. 1022–3; Fresno, Cal. Laws, 1905, p. 1057–9; Seattle, Wash., Charter Amendment adopted March 6, 1906; and San Francisco, Cal., Charter Amendment adopted Nov. 5, 1907.

State legislation

General. A number of states have provided for the recall through general legislation.

For recall provisions established through general law, compare the legislation of Ia. Laws, 1907, c. 48, sec. 18; S. D. Laws, 1907, c. 86; and Wash. Laws, 1907, c. 241, sec. 15.

Special. Municipal charters and charter amendments incorporating the recall have also been granted through special legislation.

Compare the charter provisions of Lewiston, Id. Laws, 1907, p. 358–60; Fort Worth, Tex. Special Laws, 1907, p. 130–1; Denison, Tex. Special Laws, 1907, p. 361–6; and Dallas, Tex. Special Laws, 1907, p. 621–2.

LAWS AND JUDICIAL DECISIONS

Laws relating to the recall are of recent date in the United States. However, the principle underlying the institution was recognized in America before the adoption of the constitution, when the delegates to the Continental Congress from Pennsylvania were recalled because they refused to sign the Declaration of Independence and other delegates were sent in their stead.

In Switzerland the right to recall officials seems to have been exercised in some of the Cantons from their earliest development of representative government, and although the right is not frequently exercised at the present time, the recall is a recognized institution in local government in about one-third of the Swiss Cantons.

A significant recognition of the principle is found in the development of representative government in England, for after all, the recall is not unlike the British system by which Parliament is dissolved, when the members go back to the people and a new Parliament is elected.

Foreign countries

Switzerland. The recall exists in a number of Cantons in Switzerland. Typical provisions may be found in the laws of Aargau, Basel-Landschaft, Berne, and Schaffhausen.

Aargau. Cantonal Constitution, 1885, art. 29. When 5,000 qualified electors request the recall of the Great Council in lawful manner, the Executive Council must put the demand of the people to vote. If the majority of the qualified electors declare themselves for the recall, the Great Council must be entirely renewed. The newly elected Great Council is to complete the term of the one which was recalled.

Basel-Landschaft. Cantonal Constitution, 1892, art. 29. The recall of officials may take place only in the legally prescribed forms.

Berne. Law of February 20, 1851. Provides the procedure for the recall of officials.

Also see the provisions of the Cantonal Constitution, 1893, art. 16, and of the Law of October 29, 1899, sec. 3.

Schaffhausen. Law of October 1, 1904, art. 67–9 and art. 80–2. All demands for carrying out the popular right of recall must be presented to the Executive Council in the form of written petitions, signed by at least 1,000 qualified voters of the Canton.

United States

California. The recall has been adopted by a number of cities having the right to adopt freeholders' charters and charter amendments.

Const. 1879, art. 11, sec. 8 (amended 1906). Under this section any city having a population of 3,500 or more, may adopt a freeholders' charter subject to the approval of the legislature. An amendment to the charter must be submitted to the people on petition of 15% of the electors, and if adopted, must be submitted to the legislature for approval or rejection.

Const. 1879, art. 20, sec. 16 (amended 1906). "In the case of any officer or employee of any municipality governed under a legally adopted charter, the provisions of such charter with reference to the tenure of office or the dismissal from office of any such officer or employee shall control."

Los Angeles. Charter Amendment,[3] Cal. Laws, 1903, p. 574–5. The holder of any elective office may be removed at any time by the electors qualified to vote for a successor of the incumbent. The procedure to effect the removal is as follows: The petition demanding an election of a successor of the person sought to be removed must be signed by 25% of the qualified electors, must contain a general statement of the grounds for which the removal is sought, and must be filed with the city clerk. The required percentage of signers is to be based upon the entire vote cast at the last preceding general municipal election for all candidates for the office the incumbent of which is sought to be removed. The signatures to the petition need not all be appended to one paper, but each signer must add to his signature his place of residence, giving the street and number. One of the signers of each paper is required to make oath before an officer competent to administer oaths, that the statements therein made are true, and that the signatures are genuine. Within ten days from the date of filing the

[3] The Los Angeles amendment is so like the Cantonal law of Schaffhausen, Switzerland, that it seems to have been modelled after the system developed in that Canton. The recall law enacted in Schaffhausen Nov. 16, 1876, was replaced by a new revision of Oct. 1, 1904.

petition the city clerk must examine the great register and ascertain whether or not the petition is signed by the requisite number of qualified electors. If necessary, the council must allow him extra help for that purpose. The city clerk must attach his certificate to the petition showing the result of the examination. If the petition is shown to be insufficient, it may be amended within ten days. Within ten days after amendment the clerk must make like examination of the amended petition, and if it is still insufficient, it is to be returned to the person filing the same, without prejudice, however, to the filing of a new petition to the same effect. If the petition is shown to be sufficient, the clerk must submit the same to the council without delay. If the petition is found to be sufficient, the city council must order and fix a date for holding the election, not less than thirty days nor more than forty days from the date of the clerk's certificate to the council that a sufficient petition is filed. The city council is required to provide for publication of notice, and all arrangements for holding the election; and the same is to be conducted and returned in all respects as other city elections. The successor of any officer so removed is to hold office during the unexpired term of his predecessor. Any person sought to be removed may be a candidate to succeeed himself, and, unless he requests otherwise in writing, the clerk is required to place his name on the official ballot without nomination. In any removal election the candidate receiving the highest number of votes is to be declared elected. Unless the incumbent receives the

highest number of votes, he is deemed to be removed from the office upon qualification of his successor. In case the party who receives the highest number of votes fails to qualify within ten days after receiving notification of election, the office is to be deemed vacant.

The names of the petitioners must be on the great register and ascertained by the clerk to be there, otherwise they are not qualified signers of the petition. Affidavits of registration are not a part of the great register. Davenport v. City of Los Angeles, et al., 1905, 146 Cal. 508.

San Diego. Charter Amendment, Cal. Laws, 1905, p. 922–3. The procedure for removal is similar to that of Los Angeles.

The act of the city council in accepting the petition for the recall of a councilman is merely ministerial. When a petition bears the proper number of names of electors, as shown by the clerk's certificate, no discretion remains with the council, but it is its duty to call an election. Good v. Common Council of the City of San Diego, 1907, 90 P. 44.

San Bernardino. Charter, Cal. Laws, 1905, p. 960–1. The procedure is similar to that of Los Angeles, except that the percentage is at least 30%.

Pasadena. Charter Amendment, Cal. Laws, 1905, p. 1022–3. The procedure for removal is similar to that of Los Angeles.

Fresno. Charter Amendment, Cal. Laws, 1905, p. 1057–9. The procedure is similar to that of Los Angeles, except that the percentage is at least 51%.

Santa Monica. Charter, Cal. Laws, 1907, p. 1047–8. The procedure is similar to that of Los Angeles, except that the percentage is at least 40%.

Alameda. Charter, Cal. Laws, 1907, p. 1101–3. The recall applies to appointive as well as elective of-

ficers. The percentage is based on the number of votes cast for mayor at the last preceding general municipal election. Otherwise the procedure is similar to that of Los Angeles.

Long Beach. Charter, Cal. Laws, 1907, p. 1230–33. The procedure is similar to that of Los Angeles, except that the percentage is at least 40%.

Vallejo. Charter Amendment, Cal. Laws, 1907, p. 1253–4. The procedure is similar to that of Los Angeles.

Riverside. Charter, Cal. Laws, 1907, p. 1345–7. The procedure for removal is similar to that of Los Angeles.

San Francisco. Charter Amendment, adopted Nov. 5, 1907. The procedure for removal is similar to that of Los Angeles, except that the percentage is at least 30%.

Idaho. The recall has been established through special legislation providing a municipal charter amendment for Lewiston.

Lewiston. Charter Amendment, Id. Laws, 1907, p. 358–60. The procedure for removal is similar to that of Los Angeles, with the following modifications: The cost for extra help for the examination of the petition is to be paid by the petitioners, who are required to deposit the sum necessary with the city clerk at the time of filing the petition. The amount is not to exceed $100.00 and any surplus is to be returned to the persons by whom the money is deposited. No petition for removal may be filed until the person sought to be removed shall have been in office at least

ninety days, and no person may be required to stand for reelection more than once during the term for which he was elected.

Iowa. Laws, 1907, c. 48, sec. 18. The recall is provided for in the commission plan of municipal government established by general law. The commission system may be adopted by cities having a population of or exceeding 25,000 inhabitants. The procedure for the removal of elective officials is similar to that of Los Angeles, except that the percentage of qualified electors required to sign the petition is based on the number of votes cast for all candidates for the office of mayor at the last preceding general municipal election.

Des Moines adopted the commission plan of government, including the recall provision, at a special election held June 20, 1907.

South Dakota. Laws, 1907, c. 86. The recall is a provision of the commission form of municipal government established by general law. The commission system may be adopted by cities of the first, second, or third class, or by those having special charters.

The procedure for removal is similar to that of Los Angeles, except that the percentage required is 15%. The recall applies to directors of the board of education as well as to commissioners.

Texas. The recall is provided for in a number of municipal charters granted by special legislation.

Fort Worth. Charter, Tex. Special Laws, 1907, p. 130–1. The procedure is similar to that of Los Angeles, except that the petition for removal must be

signed by a least 20% of the qualified electors of the city. Since the municipal officers are elected at large under the commission system of government prevailing in Fort Worth, the required percentage is based upon the entire electorate of the city.

Denison. Charter, Tex. Special Laws, 1907, p. 361–2, and 366. Provision is made for the recall of the mayor and of the councilmen. The petition for removal must be signed by 20% of the qualified voters of the city. Within twenty days from the date of receiving the petition, the city council must call an election, which is to be conducted and the returns made the same as for other city elections. The incumbent is to be a candidate for reelection. The newly elected officer is to qualify for the office as provided by law.

Dallas. Charter, Tex. Special Laws, 1907, p. 621–2. The procedure for removal is similar to that of Los Angeles, except that the percentage required is 35%; and since the municipal officers are elected at large, this percentage is based on the entire vote cast for candidates for the office of mayor on the final ballot at the last preceding general municipal election. A majority of all votes cast at the election is necessary to elect. In case no candidate receives a majority at the first election, a second election must be held.

Washington. The recall has been adopted by a number of cities having the right to adopt freeholders' charters and charter amendments.

Const. 1889, art. 11, sec. 10. Under this section freeholders' charters may be adopted by cities having

a population of 20,000 or more. Such charters become the organic law of the city when adopted by the municipal electorate and need not be referred to the legislature for enactment.

Laws, 1903, c. 186. Any municipality having adopted a charter under the laws of the state, may adopt direct amendments to the city charter in respect to local affairs. Any petition for a proposed amendment must be signed by 15% of the qualified voters. The required percentage is to be based on the total number of votes cast at the last preceding general municipal election. The petition must be filed with the city clerk thirty days or more before the election at which it is to be voted upon. If approved by a majority of the local electors voting upon it, the amendment becomes part of the charter organic law governing the municipality.

The Seattle charter amendment for the recall was adopted under this law.

Seattle. Charter Amendment, adopted Mar. 6, 1906. This recall provision is in the form of an amendment to that part of the city charter which relates to the term of office of elective officials. The procedure for removal is similar to that of Los Angeles, except that any person competent to make affidavit may circulate petitions.

Everett. Charter, adopted Nov. 26, 1907. This charter incorporates a recall provision similar to that of Seattle.

The recall has also been provided for cities of the second class through general legislation.

Laws, 1907, c. 241, sec. 15. The law for the government of cities of the second class incorporates the following provisions for the recall of councilmen: Whenever three-fifths of all the qualified electors of any ward, as shown by the last general municipal election returns, shall petition for the recall of their councilman, the city council is required to call a special election in the ward to elect a councilman to take the place of the incumbent. Thereupon such election must be held. Should the councilman whose recall is petitioned for be defeated, he is required to vacate his office for the balance of the term in favor of the successful candidate. The petition for recall of councilmen must be signed only in the office of the city clerk, where the petition must be kept on file for that purpose, and all signatures must be appended within an interval of ten days.

SALIENT FEATURES

The provisions for the recall are very similar for the different cities whether secured through municipal or through state legislation.

Scope of recall

Elective officials. Usually the law provides for the removal of elective officials.

For typical provisions for the removal of any elective officer, compare Los Angeles, Cal. Laws, 1903, p. 574–5; San Diego, Cal. Laws, 1905, p. 922–3; San Bernardino, Cal. Laws, 1905, p. 960–1; Pasadena, Cal. Laws, 1905, p. 1022–3; Fresno, Cal. Laws, 1905, p. 1057–9; Santa Monica, Cal. Laws, 1907, p. 1047–8; Long Beach, Cal. Laws, 1907, p. 1230–33; Riverside, Cal. Laws 1907, p. 1345–7; Seattle, Charter Amendment adopted March 6, 1906; Lewiston, Id. Laws, 1907, p. 358–60; Fort Worth, Tex. Special Laws, 1907, p. 130–1; Dallas, Tex. Special Laws, 1907, p. 621–2.

Also compare the general provisions for Ia. Laws, 1907, c. 48; and S. D. Laws, 1907, c. 86.

The charter provision for Denison, Tex. Special Laws, 1907, p. 361–6, specifically mentions the mayor and the councilmen as subject to the recall, while Wash. Laws, 1907, c. 241, sec. 15, provides for the recall of councilmen only.

The S. D. provision, Laws, 1907, c. 86, specifically includes directors of boards of education.

In cities where the recall is established under the commission form of government, provision is generally made for the removal of the commissioners and other elective officials. For typical cases, compare the provisions for Ia. Laws, 1907, c. 48, sec. 18; and S. D. Laws, 1907, c. 86.

Appointive officials. In certain cases the law also applies to the holder of any appointive office.

See Cal. Laws, 1907, p. 1101–3, for the charter provision of Alameda.

Prohibition of repeated recalls

The possible misuse of the recall is provided against by the requirement that no petition for removal be filed until the person sought to be removed has been in office for a stated period, and that no person be required to stand for reelection more than once during the term for which he was elected.

See Id. Laws, 1907, p. 358–60.

Procedure for petition

Contents of petition. It is generally the rule that the petition must include a demand for removal and must set forth the grounds for which the removal is sought.

For typical cases, compare the provisions for Los Angeles,, Seattle, Des Moines, and Fort Worth.

Qualifications of signers. Any elector qualified to vote for a successor of the incumbent may sign removal petitions.

See Davenport v. City of Los Angeles, et al., 1905, 146 Cal. 508.

Percentage of voters. The percentage of voters required to sign petitions ranges from 15% to 60%.

The percentages are 15% for S. D. Laws, 1907, c. 86; 20% for Denison and Fort Worth; 25% for Los Angeles, Alameda, Pasadena, San Diego, Riverside, Vallejo, Seattle, Lewiston, and Des Moines (Ia. Laws, 1907, c. 48, sec. 18); 30% for San Bernardino and San Francisco; 35% for Dallas; 40% for Long Beach and Santa Monica; 51% for Fresno; and 60% for second class cities of Wash. (Laws, 1907, c. 241, sec. 15).

Basis of percentage. The required percentage of signers is usually based upon the entire vote cast at the last preceding general municipal election for all

candidates for the office the incumbent of which is sought to be removed.

In cities in which municipal officers are elected at large, the percentage is frequently based upon the vote cast for all candidates for the office of mayor. Compare the provisions for Ia. Laws, 1907, c. 48, sec. 18; for S. D. Laws, 1907, c. 86; and for Fort Worth, Denison, and Dallas, Tex. Special Laws, p. 130–1; 361–2, 366; and 621–2.

Verification of signatures. Generally the signatures to the petition need not all be appended to one paper, but each signer is required to add to his signature his place of residence, giving the street and number. Each paper must be certified to by an affidavit to the effect that the statements therein made are true and that the signatures are genuine.

For different requirements for the verification of signatures, see the provisions for Los Angeles, Cal. Laws, 1903, p. 574–5; Seattle Charter Amendment, adopted, March 6, 1906; and Lewiston, Id. Laws, 1907, p. 358–60.

Filing. Provision is generally made for the filing of the petition with some designated officer, usually the city clerk.

Examination. Within a prescribed time the proper officer is required to examine the petition to ascertain whether it is signed by the requisite number of qualified electors.

Time. The time limit is usually fixed within ten days.

Assistance. Extra help must be allowed if necessary for the examination of the petition. Generally the extra expense is paid by the city. Under the Idaho law, 1907, p. 358–60, the cost for extra help must be paid by the petitioners.

Certificate of result. The city clerk or other designated official must attach his certificate to the petition showing the result of the examination.

Amendment of petition. If the petition is shown to be insufficient it may be amended. After amend-

ment, the clerk is required to examine the amended petition, and if it is still insufficient, it is to be returned to the person filing the same, without prejudice, however, to the filing of a new petition to the same effect.

For typical cases, compare the provisions of Los Angeles, Seattle, Lewiston, Des Moines, and Fort Worth.

Also compare the provisions of Schaffhausen (Switzerland), Law of October 1, 1904.

Transmission of petition to council. If the petition is shown to be sufficient, it must be transmitted to the council without delay.

This provision of the Los Angeles charter has been generally followed.

Removal election

If the petition is sufficient, the municipal council is required to order an election.

See Good v. Common Council of the City of San Diego, 1907, 90 P. 44.

Time. Generally the date for holding the election is to be fixed by the council within a specified time from the date of the certificate that a sufficient petition is filed.

Usually the time limit is fixed at not less than thirty nor more than forty days.

Candidates. The person sought to be removed may be a candidate to succeed himself, and, unless he requests otherwise in writing, his name must be placed on the official ballot without nomination.

For typical cases, compare Los Angeles, Seattle, Lewiston, Des Moines, and Fort Worth.

Manner of conducting election. Recall elections are conducted, returned, and the results thereof declared, in all respects as are other city elections.

Tenure of office

Removal of incumbent. Unless the incumbent receives the highest number of votes, he is deemed to be removed from office upon the qualification of his successor.

Term of successor. The successor of any officer removed through the recall is to hold office during the unexpired term of his predecessor.

Compare the provisions in Aargau, Cantonal Const. 1885, art. 29, and in Schaffhausen, Law of October 1, 1904. Similar provisions are found in Berne, Law of February 20, 1851.

Vacancy of office. In case the party who receives the highest number of votes fails to qualify within a prescribed time after receiving notice of election, the office is deemed vacant, and is to be filled in accordance with the general law for filling vacancies.

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